GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of M/s. K. Abdulla, Lorry-owner and Timber Merchant, Jeppu Market Road, Mangalore.

Award of the Labour Court, Mangalore published.

Read the following papers :

Letter No. A/ID 57/PuB—68-69, dated 31st December 1968 from Shri Mohd. Hameeduddin Khan, Presiding Officer, Labour Court, Mangalore.

IN THE LABOUR COURT AT MANGALORE

Dated 31st December 1968.

Reference : (ID) (LCM) No. 57 of 1968 (1/68)

Mohd. Hameeduddin Khan, B.SC., LL.B., *Presiding Officer.*

Between—

The Workman represented by the Secretary, Motor and General Mazdoor Sangha, Felix Pai Bazaar, Mangaloree.
—I Party.

and

The Management of M/s. K. Abdulla, Lorry Owner and Timber Merchant, Jeppu, Market Road, Jeppu, Mangalore-1.
—II Party.

This is a reference under Section 10(i)(*c*) of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) made by the Government of Mysore to the Labour Court at Hubli, *vide* Order No. FCL 839 LLD 67, dated 8th January 1968 for adjudication upon the following points of dispute, being of the opinion that an Industrial Dispute exists between the Workman and the Management of M/s. K. Abdulla, Lorry Owner and Timber Merchant, Jeppu Market Road, Mangalore.

The points of dispute are these :—

(i) Is the Management of M/s. K. Abdulla, Lorry Owner and Timber Merchant, Jeppu, Market Road, Jeppu, Mangalore-1, justified in terminating the services of Sri Ganapathy Naik, Driver, with effect from 22nd May 1967 ?

(ii) If not, to what relief is the said Worker entitled to?

2. This reference after its receipt was registered as Reference (ID) (LCH) No. 1 of 1968 in the Labour Court at Hubli on 10th January 1968. Notices were issued to the Parties to put in their pleadings. Claim statement was filed by the I Party on 5th March 1968. Thereafter this case was transferred to this Court by the Labour Court, Hubli as per Government Notification No. FCL 375 LLE, dated 17th May 1968 and on receipt of it by this Court it was registered in this Court on 29th July 1968 as Reference (ID) (LCM) No. 57 of 1968.

3. The cause of the aggrieved Workman has been sponsored and espoused by the Motor and General Mazdoor Sangh, Felix Pai Bazaar, Mangalore, represented by its Secretary, but Sri Prabhakar Ghate, President of the I Party Union appeared for it while Sri K. Shashidhar Rao, President of the General Management Association, Mangalore appeared for the II Party.

4. The case of the I Party Workman is that he was employed as a Lorry Driver since about November 1964 by the II Party. In the course of nearly three years of service under the II Party he was employed as the regular driver of lorry MYZ 4163 as well as two other lorries, MYX 4967 and MYX 6227. He was being paid a salary of Rs. 115 per month and batta during trips at the rate of Rs. 2 per day for trips under 50 miles and Rs. 3 per day for trips over 50 miles. He was working regularly as above till 21st May 1967. On 22nd May 1967 when he presented himself for work, he was not given work and the II Party refused to hand over the Switch Key of the Lorry MYZ 4163 of which he was the Driver. Therefore every day for about a week he presented himself for work but the II Party refused to give him work. The I Party took the matter in consiliation proceedings before the Labour Officer, Mangalore, but owing to want of co-operation on the part of the II Party the proceedings resulted in failure. Instead the II Party caused to be sent to the Workman a lawyer's registered notice dated 14th June 1967 falsely alleging that the Workman was in the service of the II Party for a couple of months and that he abstained from work as from 22nd May 1967 without previous intimation. It is alleged that the said notice was only a counterblast to the I Party having approached the Labour Office with legitimate claims. A proper reply dated 8th July 1967 was sent to the said notice. It is set out in the claim statement that the I Party treats the conduct of the II Party as a termination of services of the Workman. In doing so the II Party did not follow the obligation under law. Hence the termination of service of the Workman by the II Party is improper, illegal and invalid.

The Workman is entitled to be reinstated with full back wages, continuity of service and all other consequential benefits. It was prayed that the I Party Workman may be awarded the aforesaid reliefs after holding an enquiry.

5. The II Party resisted the claim of the I Party workman. The case of the II Party is that the Workman Sri Ganapathy Nayak, Lorry Driver was not in continuous service since November 1964. He was temporary driver and his salary was Rs. 115 (one hundred and fifteen) per month. It is denied that he was paid batta, etc., at the rates specified or otherwise. It is admitted that the said Worker was in service upto 21st May 1967 and that thereafter he did not turn up for work. The reason shown is that on 12th May 1967 the said Driver obtained Rs. 500 (Rupees Five hundred) as advance which he assured to return within ten months. Since the said driver committed default, the Management asked him to repay the debt immediately. Thereafter the said Worker remained absent and left the services of his own accord. It is pleaded that what is more in a reply notice dated 8th July 1967 sent on behalf of the said Driver to the II Party he has stated that it is false that the worker has taken advance from II Party, It is pleaded that the said Driver did not present for work any day after 22nd May 1967. It is denied further specifically that the said Worker presented for work every day about a week and that the II Party did not give him work. It is alleged that the Labour Officer suggested amicable settlement but the I Party was not willing. It is contended that there is no question of treating the conduct as termination as on the other hand the driver of his own accord voluntarily left the services only to deprive the Management of Rs. 500 which he had taken as advance. Lastly it was prayed that the demand as well as the reference be rejected with costs.

6. On 9th August 1968 my predecessor in Office framed the following additional issues in view of the contentions of both the Parties :—

(i) Whether Sri Ganapathy Nayak was in the continuous service of the II Party Management as a Driver from November 1964 as contended by the I Party, or whether he was only a temporary worker as contended by the II Party ?

(ii) Whether the said Ganapathy Nayak left the services of the II Party of his own accord as contended in Para 4 of the written statement ?

(iii) Whether the II Party paid him advance of Rs. 500 as contended in the said para of their written statement ?

(iv) To what relief, if any, is he entitled ?

7. On behalf of the I Party the first Party Workman was examined and six documents were got marked as Exhibits W-1 to 6 and G.V.R. for 1965, 1966 and 1967 got produced from the II Party. On behalf of the II Party two witnesses including the II Party were examined and disputed documents marked as Exhibits A, B, C, D were produced. This is the entire evidence on record.

8. I will proceed to consider the Issue No. (i) at the out set. The admitted fact is that the I Party Workman was in the service of the II Party till 21st May 1967 as lorry driver, and that thereafter according to the I Party Workman he was refused employment, but according to the II Party, the I Party workman left the service of his own accord to evade repayment of rupees five hundred which the I Party Workman had taken as an advance from the II Party. The other admitted fact is that the I Party Workman was drawing salary of Rs. 115 per month with batta as per trips.

9. Sri Prabhakar Ghate appearing for the I Party taking me through the entire evidence on record argued that the I Party has proved the continuity of service of the I Party Workman for over three years under the II Party, and that the II Party on the other hand has miserably failed to prove the service of the I Party Workman being temporary as contended in the counter statement.

10. The learned representative Sri K. Shashidhar Rao for the II Party did not convince this Court from the materials placed on record that the service of the I Party Workman was temporary and for a couple of months as pleaded in the counter statement. I find much force in the argument of learned Sri Prabhakar Ghate for the I Party that the continuous service of the I Party Workman has been well established.

11. G.V.R. books for 1965, 1966 and 1967 produced by the II Party being called upon to produce by the I Party *vide* application dated 20th August 1968 clearly show that the I Party Workman was in the employ of the II Party from 1965, 1966, 1967 upto 21st May 1967. But G.V.R. for 1964 was not produced. Its non-production will raise adverse presumption against the II Party that, if it was produced it would be unfavourable to the II Party. That apart, even disregarding the testimony of W.W. 1 that he joined the service of the II Party in November 1964, the admission made by M.W. 1 M. Ramdas Bhat is to the effect that this witness was working as a Clerk with the II Party for the last about 3 years and that W.W. 1 was working with this Party since before he joined their service.

12. The II Party K. Abdulla who has examined himself as M.W. 2 admitted in cross-examination in paragraph 4 that WW-1 was working with him for about two years prior to May 1967. He further stated that he cannot accurately state whether it was for 2 or 3 years without looking into the records. The II Party by producing G.V.R. of 1964 did not rebut the version of WW-1 as to his being in employ of the II Party from November 1964. Therefore there is no reason to disbelieve the version of W.W. No. 1 as to his being in employment of the II Party from November 1964.

13. The non-production of salary register in spite of being called upon by the I Party to produce *vide* the aforesaid application also leads to an adverse inference against the II Party. Thus in view of the G.V.R. for 1965, 1966 and 1967 read with the evidence of WW-1 and the admissions made by the W.M. 1 and 2 as to the I Party Workman being in the service of the II Party for two years or more, the first part of the Issue No. (i) is liable to be decided in favour of the I Party, and the second part of it is liable to be disposed of against the II Party.

14. In the result my finding on the first part of the Issue No. (i) is that Sri Ganapathy Naik was in the continuous service of the II Party Management as lorry driver from November 1964, and the second part of this issue is disposed of in the terms that Sri S. Ganapathy Naik was not a temporary worker of the II Party as contended by the II Party in the Counter statement.

15. Now I advert to consider the Issue Nos. (ii) and (iii) together burden of proof of which is on the II Party. In order to show that the I Party Workman left the service of his own accord, the story of his taking an advance of rupees five hundred from the II Party and for evading payment having left the service voluntarily has been introduced. But this is not proved satisfactorily by the II Party. The I Party Workman as WW-1 in cross-examination denied his signature on Exhibit A, the alleged receipt indicating the receipt of rupees five hundred by the I Party Workman from the II Party. He further denied his signature existing on Exhibits B, C and D dated 7th December 1966, 3rd May 1966 and 4th May 1967, the alleged receipts of payment of salary to the I Party Workman. But M. Ws. 1 and 2 deposed to these signatures being as that of the I Party Workman. Sri K. Shashidhar Rao vehemently argued with reference to the evidence of M.Ws. 1 and 2 that the signature existing on Exhibit A is proved to be that of the I Party Workman and the payment of advance of Rupees five hundred to the I Party Workman by the II Party is also made out by the evidence of M.W. 2. Therefore the fact of the amount of Rupees five hundred being due to the II Party from the I Party

Workman may be considered as a probable cause actuating him to abstain from duty of his own accord. But I do not find much force in this contention. Because even if these signatures are taken for granted to be that of the I Party Workman, it cannot be established that consideration of Rupees five hundred was actually passed to the I Party Workman. The I Party Workman as WW-1 has categorically denied in his sworn testimony as to his borrowing any money from the II Party. Therefore it was incumbent on the II Party to prove the passing of consideration to the I Party Workman by cogent and convincing evidence. But he failed to discharge this burden miserably. MW-1 is not the witness to the passing of this amount to the I Party Workman. Besides the solitary version of MW-2 that the I Party Workman signed below this receipt in Exhibit A after receiving rupees five hundred from him, there is no other independent witness to prove payment of rupees five hundred to the I Party Workman by the II Party.

16. MW-2 admitted that he has got his account books and that this amount has been debited in his accounts as having been paid to WW-1, but at the same time he has admitted in Para 5 of the cross-examination that he has not produced his account books in this proceeding. The non-production of the account books also raises and adverse presumption against the II Party that if the account books of the II Party had been produced in Court they would have been unfavourable to the II Party.

17. In the first Notice, dated 24th June 1967 issued by the II Party to the I Party Workman Sri S. Ganapathy marked as Exhibit W-3 it is simply stated that he has taken amounts from him more than what is due to him by way of salary. Specific amount of rupees five hundred taken as an advance by the I Party Workman is not mentioned therein. If it were a fact that the I Party Workman had taken rupees five hundred as an advance from the II Party then there was no reason for omission of this specific amount in the first notice. It is only in the second notice, dated 21st February 1968 marked as Exhibit W-5 that the amount as an advance taken by the I Party Workman has been shown to be rupees five hundred. But this appears to be a mere letter development, which cannot be given any weight. Hence I conclude that the II Party has failed to establish that Sri S. Ganapathy Naik I Party Workman borrowed rupees five hundred from the II Party to meet his urgent necessities as mentioned in Exhibit W-5. When the main reason of borrowing of rupees five hundred by the I Party Workman from the II Party itself is not substantiated which had made the I Party Workman to abstain from his duty, the plea of his voluntary leaving the service of the II Party stands negatived.

18. WW-1 has deposed clearly that they removed him from service on the night of 21st May 1967 when he returned from duty by about 12-30 or 1 A.M. on that night. Sri K. Abdulla told him that he did not require his services any longer, and he took the Switch Key from him. Thereafter he went to the II Party concern and reported for duty daily from about 8-9 days. On all these days he was told that there was no work which could be given to him. Then he went to the Union Office and complained about the action of the Management. On his representation the I Party Union sent a letter to the II Party, the office copy of which is Exhibit W-1, and the certificate of posting is at Exhibit W-2. Sometime thereafter he received the notice from the II Party which is at Exhibit W-3. He sent a reply to that notice as per the Office copy of Exhibit W-4. Then he received another lawyer's notice from the II Party and it is at Exhibit W-5. He gave a reply to that notice through his lawyer as per the office copy at Exhibit W-6. He does not owe anything to the II Party. Thus it is evident, that after the I Party Workman had approached the I Party Union and brought his grievances against the II Party to the notice of the I Party Union, and when the I Party Union, sent a notice to the II Party to settle the claims of the I Party Workman, that the II Party came with the plea of the I Party Workman voluntarily leaving the service of the II Party without intimation due to amount being due to the II Party from him, and that he also failed to settle the accounts, as can be seen from Exhibits W-3 and 5.

19. No doubt M.W-2 stated that he did not at all remove him from his service. He voluntarily absented himself from work. It is not correct to say that he had come to attend to work every day after 21st May 1967 and that he did not allow him to work. He left the services voluntarily thinking that he might deduct the amount of Rs. 500 from his salary. But in cross-examination on the last page he has admitted that no such default was committed by him, as the amount had been paid to him in that very month. Even if it is taken for granted for the sake of argument that Rs. 500 was paid by the II Party to the I Party Workman on 12th May 1967 as per receipt Exhibit A, there was no reason for the I Party Workman to remain absent from 22nd May 1967 on his own volition, because according to the contents of Exhibit A the amount was to be repaid in ten equal monthly instalments and the first instalment had not even fallen due. I do not think it probable that from the very outset the intention of the I Party Workman was *mala fide* to dupe his master, the II Party, by obtaining an advance of Rs. 500.

20. MW-1 showed his ignorance, as to the discharge of Ganapathy Naik by the II Party Management. Thus there is no cogent evidence led on the side of the II Party as to the first Party leaving

the service of his own accord. But on the other hand the evidence of WW-1 indicates that in spite of his repeatedly asking the II Party after 22nd May 1967 to take him back to service the II Party refused to take him back telling that his services were required no longer. Such a refusal to take him back to service without reasonable cause amounts to actual termination of the services of the I Party Workman. In the result I hold that the II Party failed to establish that the I Party Workman obtained rupees five hundred from the II Party Management on 12th May 1967 as per Exhibit-A, and that the I Party Workman left the service of the II Party of his own accord. But on the other hand the II Party's refusal to take the I Party Workman back to his service virtually amounts to termination of his services illegally. My findings on the Issues 3 and 2 will be accordingly.

21. Now comes the first point of dispute. Is the Management of M/s. K. Abdulla, Lorry Owner and Timber Merchant, Jeppu Market Road, Jeppu, Mangalore-1 justified in terminating the services of Sri Ganapathy Naik, Driver, with effect from 22nd May 1967? The contention of the learned representative Sri Prabhakar Ghate for the I Party is that the refusal of the II Party to give the usual work of driver to the I Party Workman from 22nd May 1967 amounts to termination of his service; whereas the contension of the learned representative Sri K. Shashidhar Rao for the II Party is that even if it is taken for granted that there was refusal to give employment to the I Party Workman it does not amount to termination of service entitling the I Party Workman for reinstatement.

22. Sri K. Shashidhar Rao has no doubt cited a case reported in 1956 I LLJ Page 575, but this case, in my view, is not in all fours with the present case. In that case the fitter Samsuddin who had been reinstated in terms of the award and paid wages due to him, was not provided with any work, but his salary was being paid regularly without extracting any work from him. He was not given work for security reasons, and that resulted in harmonious relation between the workmen and the Management and the work also improved both in quality and quantity. There the fitter workman filed a complaint against this attitude of the Management and his grievances were that the non-provision of his normal work would make him lose his efficiency in the work, and the non-provision of work will amount to lock out, and change of conditions of service. In view of the peculiar facts of that case it was held therein that "the expression means refusal by the employer to allow a member of his workmen to attend their duties without terminating their services." "But this view was expressed in connection with the question whether such a non-provision of work amounts to a lock out. At page 577 it has been observed that the expression "refusal

to employee" in this conection [illegible] refusal to find work for the workman, but it means [illegible] intention not to pay. It will not be lock out if the [illegible] workmen but does not give them any work." [illegible] of refusal as given in this case is taken to mean [illegible] of an intention not to pay, then this case will be rather [illegible] to the I Party. Because in the present case the refusal to give work will be tantamount to an intention on the part of the II Party to deprive the I Party Workman of his due wages which he could get if he had been given work. In my view the refusal to give work in the circumstances of the instant case is nothing but an indirect way of termination of service, and I have already expressed in connection with the Issue No. 2 that the II Party's refusal to take the I Party Workman back to his service virtually amounts to termination of his service illegally. That being my opinion, the first point of dispute shall have to be answered in the negative.

23. At this stage I must refer to the other contention of the learned advocate for the II Party by which he cautioned the Court with reference to Section 10(4) of the Industrial Disputes Act, 1947 to restrict its findings to the points of dispute, and to the points incidental thereto only. He tried to argue that this Court cannot consider the point whether the refusal to give work can amount to a termination of service of the I Party Workman or not, but urged that it should concentrate its attention on the points of dispute only, *i.e.*, chiefly the point No. 1, and that, as in this case the I Party Workman has not proved termination of his service, his case must fail. I do not see any substance in this submission of his, because in the light of the ruling of the Patna High Court reported in 1968 (I) LLJ 369, if this Court has considered the point whether the refusal to give work to the I Party Workman by the II Party can amount to termination of service, it cannot be said that this Court has exceeded its jurisdiction. Therein it is observed at Page 372 that "The power of the tribunal to look into the pleadings for the purpose of findingout the exact nature of a dispute which was referred to it is beyond dispute, in view of the recent pronouncement of their Lordships of the Supreme Court in the case of Delhi Cloth and General Mills Company Ltd. *vs.* their Workmen and others (1967 (I) LLJ 423 at 431). It is held further that "The Tribunal cannot be said to have travelled beyond the term of reference, in construing the reference with regard to customary bonus as contractual in the facts and the circumstances of the case."

In the light of the ruling of the Patna High Court indicated above the contention of Sri K. Shashidhar Rao fails.

24. In the result the point No. 1 of dispute mentioned in the order of reference is answered in the negative.

25. Now remains the additional issue No. 4 which is identical to point No. 2 of the dispute mentioned in the order of reference.

26. When it is found that the termination of service of the I Party Workman is unjustified, the normal relief that can be granted to him would be of reinstatement with back wages. In 1960 (I) LLJ Supreme Court Page 504 Swadesamitran Ltd. *vs.* Their Workmen it is held that, "In the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement could not be defeated merely because time has elapsed or that the employer has engaged in the meantime fresh hands." The same principle as laid down in this case quoted above may be applicable in case of an unlawful termination of service, as is in this case, though, though it may not constitute a dismissal or discharge on account of any misconduct of the Workman. Consequently the I Party Workman merits reinstatement with continuity of service.

27. Now arises the question as to what back wages should be awarded to the I Party Workman, whether full or half back wages should be awarded to him. There is no evidence as to the financial capacity of the II Party and further there is no evidence as to the I Party Workman being employed elsewhere after the termination of his service from 22nd May 1967 up to this time. Under these circumstances an award of half back wages will be quite just and proper. It is admitted that the I Party Workman was drawing a salary of Rs. 115 per month. That being the case he is entitled to get half of this salary as his back wages from 22nd May 1967 upto the date of his reinstatement.

28. Hence this issue No. 4 and the point No. 2 of the dispute under reference is disposed of in the terms that the I Party Workman is entitled to reinstatement with continuity of service with half back wages, taking his salary to be Rupees One Hundred and Fifteen per month, from 22nd May 1967, the date of termination of his service upto the date of his reinstatement.

29. In view of the result of the additional issues and the points of dispute mentioned in the order of Reference I make the following **Award** :—

AWARD.

The Management of M/s. K. Abdulla, Lorry Owner and Timber Merchant, Jeppu Market Road, Jeppu, Mangalore-1, is not justified in terminating the services of Sri Ganapathy Naik, Driver, with effect from 22nd May 1967. The Management is directed to reinstate him with continuity of service and pay him half back wages from 22nd May 1967 till the date of his reinstatement taking into account his salary as Rs. 115-00 per month. The reinstatement shall be made within fifteen days from the date of publication of this Award in the Official Gazette. In the circumstances of this case the Parties are directed to bear their respective costs.

MOHD. HAMEEDUDDIN KHAN,
Presiding Officer,
Labour Court, Mangalore.

Mangalore,
31st December 1968.